Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Complete Detariffing for	)	
Competitive Access Providers and	)	CC Docket No. 97-146
Competitive Local Exchange Carriers	)	

COMMENTS OF WORLDCOM, INC.

Pursuant to the Commission's Public Notice DA 00-1268 (rel. June 16, 2000), WorldCom, Inc. ("WorldCom") hereby submits additional comments to update and refresh the record on mandatory detariffing of the interstate exchange access service rates of competitive local exchange carriers ("CLECs"). As the second largest interexchange carrier ("IXC") and one of the largest facilities-based CLECs, WorldCom is both a significant seller and a significant buyer of exchange access services. Based on this dual perspective, WorldCom believes that while mandatory detariffing will not by itself resolve all controversy surrounding CLEC access charges, it is a step in the right direction that will encourage parties to negotiate mutually acceptable rates and terms for CLEC switched access services.

I. Background

In the Spring of 1996, two CLECs filed petitions asking the Commission to forbear from various tariff filing requirements.[1] Subsequently, the Commission adopted a *Memorandum Opinion and Order* in which it determined that the statutory criteria for forbearance were met with respect to CLEC providers of exchange access services.[2] Since those petitions did not request complete detariffing, the Commission permissively detariffed CLEC access services and issued a Further Notice of Proposed Rulemaking proposing to completely detariff CLEC access services.

At the time it was uncertain whether the Commission had the necessary legal authority to adopt a policy of mandatory detariffing. On April 28th of this year, the United States Circuit Court of Appeals for the District of Columbia Circuit upheld the Commission's authority to adopt mandatory detariffing for non-dominant carriers.[3] Thus, it is now clear that the Commission has authority to completely detariff CLEC access charges.

Following the Commission's adoption of permissive detariffing of CLEC access charges, controversy arose concerning the tariffed access charges of at least some CLECs. On October 23, 1998, AT&T filed a Petition for Declaratory Ruling asking the Commission to find that IXCs may elect not to purchase switched access services offered under tariff by CLECs. AT&T was apparently frustrated by the refusal of some CLECs to negotiate mutually acceptable switched

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[1] Hyperion Telecommunications, Inc. Petition Requesting Forbearance, CCB/CPD No. 96-3 (filed March 21, 1996); Time Warner Communications Petition for Forbearance, CCB/CPD No. 96-7 (filed May 2, 1996).

[2] *In the Matters of Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, CC Docket No. 97-146 (rel. June 19, 1997).

[3] *MCI WorldCom, Inc. v. FCC,* 209 F.3d 760.

access arrangements. The Commission subsequently denied AT&T's petition on the grounds that the facts were insufficiently clear to issue a declaratory ruling, while simultaneously initiating a rulemaking to examine CLEC access charges.[4]

The controversy over CLEC access charges has not been confined to comments and reply comments filed with the Commission. It has escalated into formal complaint proceedings between some CLECs and some IXCs.[5] Those proceedings have not resolved whether or not IXCs may refuse to purchase the tariffed access services of CLECs. Two groups of CLECs recently asked the Commission to issue a preliminary injunction to prevent AT&T from refusing to accept their access services.[6] The Commission has accepted comments and replies on those petitions but has not yet acted.

II. Complete detariffing of CLEC access charges is consistent with the Commission's preference for marketplace solutions.

The Commission has stated that insofar as CLECs may be imposing unreasonably high access charges, it prefers marketplace solutions over regulatory solutions. WorldCom shares this preference. Non-dominant carriers should not be subject to the panoply of regulation that applies

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[4] *In the Matter of Access Charge Reform,* CC Docket No. 96-262, *Fifth Report and Order and Further Notice of Proposed Rulemaking,* ¶¶ 188,189.

[5] *See, e.g., Sprint Communications Company, L.P. v. MGC Communications, Inc.,* File No. EB-00-MD-002 (rel. June 9, 2000).

[6] On February 18, 2000, the Rural Independent Competitive Alliance filed a petition seeking "Emergency Temporary Relief Enjoining AT&T Corp from Discontinuing Service Pending Final Decision." On May 5, 2000, the Minnesota CLEC Consortium filed a similar petition.

to dominant carriers. But there can be no marketplace solution as long as CLECs believe that simply by filing a tariff and interconnecting with an ILEC's access tandem, they can force all IXCs that are also interconnected with that access tandem to accept the CLEC's access services on the terms described in the tariff.

A fundamental prerequisite for a market is the presence of a willing buyer and a willing seller. Yet some CLECs appear to believe that IXCs have no choice but to accept CLEC access services. If this is true, then there can never be a marketplace solution to unreasonable CLEC access charges. If IXCs can be forced to purchase CLEC access services, then by definition there is no market for CLEC access services. There is instead coerced commerce which is inimical to a free market.

An important purpose of a tariff is to protect the buyers of a communications service from the exercise of market power, in the form of unreasonable and discriminatory charges, by the seller.[7] Some CLECs appear to have turned this on its head. They use their tariffs to establish a basis on which to bill IXCs for services that they have not agreed to purchase. They insist that the mere filing of a tariff creates an obligation on IXCs to purchase their services. While the Commission has never accepted this argument, complete detariffing of CLEC access charges would encourage these CLECs to enter the marketplace and negotiate with potential purchasers of their services. This is how markets have always worked. The Commission should not allow some CLECs to continue to use the Commission's tariff process to extort payments from IXCs for "services" that the IXCs would prefer not to receive. Detariffing will promote the

[7] *See, e.g., AT&T v. Central Office Telephone, Inc.*, 524 U.S. 214, 222 (1998).

Commission's preference for marketplace solutions by encouraging parties to negotiate mutually acceptable terms and conditions for CLEC access services.[8]

III. Complete detariffing of CLEC access charges can promote the Commission's goal of reducing regulatory burdens without exposing the purchasers of CLEC access services to discriminatory or unreasonable treatment.

Complete detariffing of CLEC access charges would yield a series of benefits. First and most importantly, it would encourage all CLECs to negotiate mutually agreeable charges with the IXCs that purchase their services. It would also promote the Commission's deregulatory goals, reduce filing burdens, and avoid continuing complaint proceedings involving CLECs that, pursuant to tariff, bill IXCs for services that the IXCs have explicitly requested the CLEC to withdraw. Moreover, these benefits can be realized in a manner that does not expose the purchasers of CLEC access services to discriminatory or unreasonable treatment.

To ensure that CLECs not discriminate against unaffiliated carriers, the Commission should require CLECs publicly to disclose the terms on which they provide access services to any unaffiliated provider. Such disclosure could be accomplished, for example, by publication on the Internet. Other carriers should be permitted to "opt in" to any agreement a CLEC reaches with any other entity for access services. Rules to require publication and allow other entities to opt in to agreements would promote the Commission's competition goals without exposing IXCs to discriminatory or unreasonable treatment.

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[8] It is also time for the Commission to eliminate other regulatory burdens applicable to non-dominant carriers that clearly are not consistent with the operation of a "free market" -- e.g., the requirement that such carriers obtain prior Commission authorization before ceasing to offer a product.

Publication would also protect CLECs against discriminatory treatment by IXCs. If an IXC agrees to accept the access services of one CLEC in a particular geographic area, a refusal to accept services from another CLEC operating in the same area on similar terms and conditions, may constitute a discriminatory practice under the Communications Act and the Commission's rules.

IV. Detariffing will require a brief transition period.

Complete detariffing of CLEC access charges cannot be accomplished in a single step. There are hundreds of CLECs and IXCs that will have to negotiate agreements on the terms and conditions under which the IXCs will obtain the CLECs' access services. WorldCom recommends that the Commission allow up to nine months from the effective date of its order for these negotiations to take place. During this period, CLECs may decide to offer fairly standard terms and conditions. There will be an incentive for CLECs to offer terms and conditions fairly similar to those offered by the ILEC with which they compete, since refusal by an IXC to accept those terms might constitute a discriminatory practice under Section 202 of the Communications Act.

During the transition period, the Commission should allow all parties to continue to do business as they have during the preceding period for up to nine months. This transition period will allow negotiations to proceed without any immediate disruptions to pre-existing access arrangements. Parties would of course remain free to complete their agreements prior to the end of the transition.

V. Conclusion

Competition in telecommunications markets cannot flourish if one group of carriers can dictate the terms and conditions on which it will exchange traffic with another group of carriers. The Commission has determined that CLEC access rates should be disciplined by market forces, not price regulation. Detariffing will help to unleash those market forces. It will encourage all CLECs to negotiate, not dictate the terms and conditions on which IXCs will purchase CLEC access services.

Respectfully submitted,
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June 12, 2000

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Comment of WorldCom, Inc. In the Matters of Access Charge Reform, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers were sent via first class mail, postage paid, to the following on this 12th day of July 2000.

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